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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The HRC should support effective prevention of use of the death penalty against persons with mental or intellectual disabilities

On10 October 2014 Amnesty International, together with other members of the World Coalition Against the Death Penalty, will mark the 12th World Day Against the Death Penalty. This year the abolitionist movement has chosen to highlight the use of capital punishment against persons with mental or intellectual disabilities.

International standards on the use of capital punishment clearly state that the death penalty should not be imposed on people with mental or intellectual disabilities. This prohibition was most recently restated by the United Nations Secretary-General in his 2014 report to 27th session of the Human Rights Council on the question of the death penalty.[1]

The issue was first raised 30 years ago by the UN Economic and Social Council (ECOSOC) in its Safeguards guaranteeing protection of the rights of those facing the death penalty,[2] which stated that "the death sentence shall not be carried out on [...] persons who have become insane." The standard was elaborated further in 1989, when ECOSOC recommended that UN Member States eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution",[3] and through the subsequent work of other UN bodies and mechanisms, including the former UN Commission on Human Rights, which in its resolution 2005/59 urged States not to impose capital punishment on or execute "a person suffering from any mental or intellectual disabilities".[4]

The restriction, however, is not yet fully reflected in the laws and practices of States that still retain the death penalty in their legislation. While there has been some recognition, in laws of retentionist countries, of the fact that persons suffering from mental disabilities (also known as mental illnesses or psychosocial disability) lack mental competence to stand trial or be subjected to capital punishment, protection for those with intellectual disabilities is not codified in the laws of all UN Member States where people may be sentenced to death.

Furthermore, in the case of both mental and intellectual disabilities, national laws provide little or no guidance as to how legal restrictions are to be applied as safeguards in practice. This, together with inadequate legal representation, the mandatory imposition of the death penalty and lack of resources for independent medical assessments before and after sentencing means that – very often – persons with mental and intellectual disabilities have been exposed to the use of the death penalty, including some who have been executed.

Recent examples of the use of the death penalty against persons with mental or intellectual disabilities

In 2014 alone, Amnesty International documented the use of the death penalty against persons with mental or intellectual disabilities in several countries. The following are just some examples of how concerns about mental or intellectual disabilities of people under sentence of death are either not raised or are disregarded by the authorities authorizing the use of the death penalty in their jurisdictions.

Devender Pal Singh Bhullar has been receiving treatment at a psychiatric facility in **India** since 2010. Despite this, the President of India rejected his mercy petition in 2011 and the Supreme Court upheld his death sentence in March 2013 without adequately considering concerns around his mental health. In May 2013, a medical panel set up to assess his

[1] "Question of the death penalty-Report of the Secretary-General", A/HRC/27/23 (30 June 2014), paragraph 62.
[2] UN Economic and Social Council, Resolution 1984/50 adopted on 25 May 1984, and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984, paragraph. 3.
[3] UN Economic and Social Council, Resolution 1989/64 adopted on 24 May 1989, paragraph 1(d).
[4] Operative paragraph 7 (c)

condition stated that he was suffering from a form of psychosis. Another medical panel examined Devender Pal Singh Bhullar in December 2013, and found that his symptoms of psychosis had continued, and "chances of his full recovery remain poor." It was only on 31 March this year[5] that the Indian Supreme Court commuted his death sentence, on the grounds of mental illness and delay in the disposal of his mercy petition. This ruling followed the Supreme Court's landmark judgment in January 2014, in which the court commuted the death sentences imposed on Sundar Singh and Magan Lal Barela on the ground that they suffer from mental illness.[6] While these are welcome developments, it is of grave concern that all three men had their mercy petitions rejected and were facing executions despite their mental health status.

In **Japan**, several prisoners suffering from mental illness have already been executed and others remain on death row. Hakamada Iwao, now 78 years old, was sentenced to death for murder following an unfair trial in 1968. Like most other persons on death row, Hakamada Iwao was held mainly in solitary confinement. Within months of the Supreme Court's 1980 judgment confirming his death sentence, he began to show signs of seriously disturbed thinking and behaviour. His communication with his lawyers became ineffective and his letters and verbal communication with his elder sister incoherent. His letters made absolutely no sense after August 1991, according to his sister. While he was temporarily released pending retrial in March 2014, he continues to suffer from mental illness and could go back in prison if an appeal by the prosecution against the order for retrial is successful.

In **Malaysia**, Nigerian national Osariakhi Ernest Obayangbonis[7] was due to be executed on Friday 14 March 2014 for a murder committed 18 years ago. He had been diagnosed as suffering from schizophrenia before his appeal in 2007 and has been receiving treatment for his mental illness since then. His execution was temporarily stayed only hours before the scheduled time and he currently remains detained in Kajang Prison in Selangor state.

Amnesty International highlighted[8] how Mohammad Asghar, who was sentenced to death under **Pakistan**'s blasphemy laws in 2010, was denied access to his lawyers until late January 2014. He had been diagnosed as suffering from paranoid schizophrenia and has had frequent episodes of delusions. He remains under sentence of death and is not being provided with adequate medical care. He is physically and mentally very frail.

Since the beginning of the year Amnesty International has raised concerns in relation to the cases of four men with mental or intellectual disabilities in the **United States of America**. Askari Abdullah Muhammad was executed in Florida on 7 January 2014 for a prison murder committed in 1980. He had a long history of serious mental illness, including diagnoses of paranoid schizophrenia. On 9 April Mexican national Ramiro Hernandez Llanas was executed in Texas despite evidence that his intellectual disability, as assessed in six different IQ tests over the past decade, rendered his death sentence unconstitutional. Robert Campbell had his execution stayed just two and a half hours before it was due to be carried out in Texas on 13 May to allow his lawyers to pursue an appeal based on new evidence that he has an intellectual disability that would render his execution unconstitutional.

Among the condemned prisoners currently seeking clemency from the governor of Florida, and who may face an execution date if their requests are rejected, are Frank Walls and Michael Zack. Frank Walls, who was 19 at the time of the crime, was assessed as functioning at the level of a 12-year-old and as suffering from brain damage, brain dysfunction and major psychiatric disorders. Michael Zack suffered severe physical, sexual and psychological abuse as a child and teenager. Mental health experts present at his trial testified that in their opinion he suffered from post-

[5] Amnesty International, "India: Commutation of another death sentence must spur rethink on death penalty", ASA 20/009/2014, 31 March 2014.

[6] Amnesty International, "India: Landmark Supreme Court decision upholds rights of death row prisoners", ASA 20/002/2014, 21 Jan 2014.

[7] Amnesty International, "Malaysia: Halt imminent execution of man suffering from mental illness", 13 March 2014. Osariakhi Ernest Obayangbonis was convicted under the name of Philip Michael, based on the British passport that was found on him at the time of arrest.

[8] Amnesty International, "Pakistan: Man sentenced to death under blasphemy law: Mohammad Asghar", ASA 33/002/2014, 6 February 2014.

traumatic stress disorder, chronic depression, and possible brain damage, had the mental and emotional age of a young child, and that his ability to appreciate the criminality of his conduct had been substantially impaired.

The need to strengthen international standards and provide guidance on assessments

A person should not be sentenced to death if they have mental or intellectual disabilities at the time of the commission of the crime; if they have been first affected by or diagnosed with a mental or intellectual disability after being arrested, while in detention facing trial; or after being sentenced to death, while spending time on death row. Persons with mental and intellectual disabilities are more vulnerable to the possibility of miscarriages of justice and greater protection should be afforded to them, particularly when confronting the ultimate cruel, inhuman and degrading punishment.

Pending full abolition of the death penalty, States must ensure that relevant international human rights law and standards are complied with in all death penalty cases. In order to ensure that safeguards guaranteeing the rights of persons with mental or intellectual disabilities are implemented in practice, there should be regular, independent and rigorous health assessments of those arrested, charged and detained in relation to offences punishable by death, at intervals throughout the entire criminal justice process, including after sentence.

The onus is on the authorities at all levels to ensure that the criminal justice system in their country is equipped with all the necessary technical expertise and resources to allow the strictest adherence to international standards in all capital cases. As soon as mental or intellectual disabilities are diagnosed, individuals should receive appropriate treatment, and must not be killed.

Amnesty International calls on the Human Rights Council to urgently consider this matter with a view to the provision of detailed guidance to all UN Member States on how to ensure that the death penalty is not imposed or implemented against persons with mental or intellectual disabilities.